IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

WP(C).No. 9926 of 2005(F)

AGAINST THE ORDER DATED 5/6/04 IN EA 93 /2004 IN OS.813/1981 of ADDL.MUNSIFF COURT, ALAPPUZHA

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PETITIONER:

KANDANKALI SUKUMARAN,
KAROKKARA VELIYIL HOUSE, NORTH ARYAD MURI,
KOMALAPURAM VILLAGE, AMBALAPUZHA TALUK,
ALAPPUZHA DISTRICT.

BY ADV. DR.P.S.KRISHNA PILLAI
SRI.H.VINOD

RESPONDENT:

AMBUJAKSHI KATHAMBARI,
ARAPUZHA VELIYIL HOUSE, NORTH ARYAD MURI,
ARYAD NORTH VILLAGE, AMABALAPUZHA TALUK,
ALAPPUZHA DISTRICT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.9926/05

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF AFFIDAVIT DT.24.1.02.

EXT.P1(A) – TRUE COPY OF PETITION DT.24.1.02.

EXT.P2 – TRUE COPY OF AFFIDAVIT IN E.A.93/04

EXT.P2(A) – TRUE COPY OF PETITION IN EA.93/04

EXT.P3 – TRUE PHOT COPY OF ORDER DT.5.6.04 ON E.A.93/04.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.9926 OF 2005

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DATED THIS THE 17th JULY, 2007

J U D G M E N T

The petitioner who was a stranger before the execution court filed an obstruction petition/claim petition under Rules 97 and 99 of Order XXI C.P.C. The petition was dismissed as a consequence of the dismissal of the execution petition for default. The petitioner's attempt to have the order dismissing his petition under Order XXI Rules 97 and 99 reviewed was also unsuccessful. Hence this Writ Petition under Article 227 of the Constitution.

2. Even though the respondent-decree-holder has been served with notice, she has not entered appearance before this Court to resist the prayers in the Writ Petition. Nevertheless, I am of the view that it would suffice if the Writ Petition is disposed of with the following observations/directions:-

1. The execution court will issue notice to the petitioner also in the event of the respondent filing any fresh execution petition for execution of the decree in O.S.No.813 of 1981.

2. If it becomes necessary for the petitioner to file any claim or obstruction as regards the executability of the decree upon the properties over which the petitioner claims title, Ext.P3 and any earlier

order which was sought to be reviewed as per the petition resulting in Ext.P3 will not operate as res judicata.

The Writ Petition is disposed of as above.

(PIUS C.KURIAKOSE, JUDGE)

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